

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
COMMODITY FUTURES TRADING :  
COMMISSION : 18-CV-00361 (JBW)  
:  
v. : 225 Cadman Plaza East  
: Brooklyn, New York  
:  
McDONNELL, et al., : March 6, 2018  
:  
Defendant. :  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: KENNETH B. TUMER, ESQ.  
GATES SALYERS HURAND, ESQ.  
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For the Defendant: PATRICK K. McDONNELL, Pro Se  
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Proceedings recorded by electronic sound recording, transcript  
produced by transcription service

1 (Proceedings began 2:21 P.m.)

2 THE CLERK: Civil cause for status conference, CFTC  
3 v. McDonnell, docket number 18-CV-361. Parties, please state  
4 your appearances for the record.

5 MR. TOMER: Brent Tomer from the Commodity Futures  
6 Trading Commission for the plaintiff.

7 MR. HURAND: Gates Hurand for the plaintiff.

8 MR. OAKLAND: David Oakland for the plaintiff.

9 MS. De URIOSTE: Alejandra de Urioste for the  
10 plaintiff.

11 MS. SULTAN: Manal Sultan for the plaintiff.

12 THE COURT: Good afternoon.

13 MR. MCDONNELL: Hi, I'm Patrick McDonnell,  
14 Defendant, Pro se.

15 THE COURT: All right. Welcome to all of you.  
16 Please be seated. And I encourage you to remain seated during  
17 the proceeding so you'll be closer to the microphones.

18 This is an unscheduled proceeding following a  
19 hearing before Judge Weinstein. What is it that you would  
20 like me to do today?

21 UNIDENTIFIED SPEAKER: Yes, Your Honor. Judge  
22 Weinstein sent us down here to help work out a expedited  
23 discovery schedule and deadlines in advance of a June 5th  
24 hearing. At which time the Judge will consider both  
25 preliminary and permanent injunctive relief for the

1 commission.

2 Judge Weinstein, also this morning, entered an order  
3 granting expedited discovery of the defendant. We have a list  
4 of things that we have requested that we want -- would like to  
5 request of the defendant relating to his business. And we  
6 think it would probably make sense to just put that on the  
7 record today and resolve any disputes with respect to that  
8 which may arise.

9 Finally, Judge Weinstein ordered that we do -- enter  
10 into mediation as well. You know, speaking from the  
11 plaintiff's perspective, we're happy to do so. The prospects  
12 of that at this point I think, given Mr. McDonnell's  
13 statements upstairs are unlikely, but we're happy to enter it  
14 with an open mind. We would propose to do that at an earlier  
15 date given the expedited discovery schedule we're going to be  
16 moving pretty quickly toward what will be a full blown  
17 hearing.

18 THE COURT: What date is the hearing?

19 UNIDENTIFIED SPEAKER: June 5th, Your Honor.

20 THE COURT: So there are -- you want to make a list  
21 of discovery matters that you're seeking from the defendant?

22 UNIDENTIFIED SPEAKER: That's correct, Your Honor.  
23 We have a -- we have a list here that we've prepared.

24 THE COURT: Have you served any discovery demands on  
25 him?

1 UNIDENTIFIED SPEAKER: Not as of yet.

2 THE COURT: And you haven't talked with him about --  
3 you indicate that there are disputes that you want resolved.  
4 Have you attempted to resolve them with Mr. McDonnell?

5 UNIDENTIFIED SPEAKER: With respect to the actual  
6 discovery requests, we've not spoken one-on-one with Mr.  
7 McDonnell upstairs. We listed some of the things that we  
8 want. We did receive some dispute in response. Given that  
9 the Court has ordered ten days for this discovery to proceed  
10 before we begin full blown discovery on a 90-day schedule,  
11 we'd ask that the Court hear today any disputes that may arise  
12 with respect to that listing of discovery requests. Which is  
13 a fairly short list for the expedited relief that was granted.

14 THE COURT: All right. I don't know that I'm going  
15 to be able to resolve discovery disputes today when I'm  
16 hearing them for the first time. And I haven't even reviewed  
17 the entire record. But why don't you tell me what it is  
18 you're seeking.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor. I'm  
20 going to pass the mic here to Mr. Hurand, my colleague.

21 MR. HURAND: Thank you, Your Honor. A list of  
22 things that we would seek to be ordered by the Court for the  
23 production on the ten day schedule that the Court outlined  
24 upstairs. The first thing would be all virtual currency  
25 accounts. Either in the defendant's names, that's Mr.

1 McDonnell or CabbageTech Corp. or under their control.

2 THE COURT: When you say you want all virtual  
3 currency accounts, am I -- you're talking about an  
4 identification of them?

5 MR. HURAND: Yes, Your Honor. The location of those  
6 accounts, the location of the wallets, either public or  
7 private. The addresses of those wallets, and accounts to the  
8 extent that they exist on exchanges or wallet services.

9 THE COURT: I'm sorry. And the last thing you want  
10 is what?

11 MR. HURAND: Account information to the extent that  
12 a third-party provider has that wallet account service that's  
13 being provided to the defendants, either in their name or  
14 under their control.

15 The second thing -- or second category would be all  
16 U.S. and all foreign bank accounts held by in the name of the  
17 defendants or under their control.

18 And the third thing would be all PayPal records  
19 relating to the defendants. And the fourth category would be  
20 a list of all customer names, deposits and time periods of  
21 dealings with the defendants.

22 THE COURT: And when Judge Weinstein ordered  
23 expedited discovery in the next ten days, did he define or  
24 explain what discovery would be encompassed within the  
25 expedited discovery?

1 UNIDENTIFIED SPEAKER: The request for expedited  
2 discovery were books and records of the defendant's business,  
3 CabbageTech and Coin Drop Markets. We think that these  
4 requests are all encompassed within that. But are  
5 specifically tailored to ensure that the defendant knows  
6 exactly what we're seeking.

7 THE COURT: All right. Mr. McDonnell?

8 MR. McDONNELL: Yes, ma'am.

9 THE COURT: Do you want to respond?

10 MR. McDONNELL: I was -- I entered into complete  
11 exploratory resolution with the plaintiffs. We had -- both  
12 parties had agreed to enter into communication where we would  
13 try to resolve this prior to getting to this point. I was  
14 asked for this same information by the plaintiffs and I'm  
15 finding it very hard to believe that with three witnesses and  
16 approximately a couple hundred customers that are satisfied  
17 with my company, that they're requesting information -- for a  
18 defendant in a case like this, it's very hard to be sitting  
19 across the table from somebody that's asking you for your  
20 customers when they're saying that I ran away with all my  
21 company's money and all my customer's money.

22 So for me I object everything that they have said,  
23 especially in reference to discovery because I came open forth  
24 in terms of trying to resolve this with them. And when I did  
25 resolve it with them, they told me that they had no victims

1 and they had none of my customer records and that David  
2 William Oakland, the attorney right here, he stated that the  
3 CFTC can charge me up to \$170,000 per customer that I have.

4 Now in the resolution, you know, things that we had  
5 with them, they -- you know, I look at it like this. You  
6 know, you have three customers over a couple hundred  
7 customers. And the three particular customers actually happen  
8 to be ex promoters of my company. There's not one customer  
9 complaint. And therefore, I think the information that  
10 they're requesting should already be in their hands to bring a  
11 case like this. Because if they don't have that type of  
12 information, where are all these allegations coming from?

13 So I really object to anything that they say because  
14 I've -- I haven't done nothing wrong in relation to this case  
15 and according to my motions -- I don't know if you've read  
16 them -- this is a total --

17 THE COURT: I have not -- I was not --

18 MR. McDONNELL: It's a fabricated case, Your Honor.  
19 And if you look at the facts, you'll clearly see it.

20 THE COURT: Well there was a motion to dismiss that  
21 was denied by the district court judge.

22 MR. McDONNELL: Yes.

23 THE COURT: And although you talk about exploratory  
24 resolution, the case has not been resolved. So the case is  
25 proceeding.

1 MR. McDONNELL: Yes.

2 THE COURT: It's going forward. Judge Weinstein has  
3 ordered -- I'm told, and I haven't heard you dispute that --  
4 that he's given you ten days to produce the books and records.

5 MR. McDONNELL: Yes, he has.

6 THE COURT: And now the issue is what -- among the  
7 books and records you should be produced within ten days, it's  
8 no answer to say that this is a bogus case. We're beyond that  
9 point. That's been ruled on. It's going to go forward. And  
10 the only question is the specifics --

11 MR. McDONNELL: Okay.

12 THE COURT: -- that you have to produce. So other  
13 than the fact that you tried to resolve the case and you  
14 believe there are not real victims, do you have any other  
15 objections?

16 MR. McDONNELL: I object to the full request for the  
17 information.

18 THE COURT: On the grounds that you've already --

19 MR. McDONNELL: On the --

20 THE COURT: -- stated?

21 MR. McDONNELL: -- on the grounds that I believe  
22 that in order to bring a complaint or a case against any  
23 defendant you should have this information. Because they're  
24 looking to take this information to turn satisfied customers  
25 into victims that they can get \$170,000 per customer if the



1 wording of this case isn't put together correctly. And that's  
2 the problem that I've had, is the wording is the problem. I  
3 was 100 percent willing -- I would bring my books in here  
4 right now for you to inspect them, but I'm very, very --

5 THE COURT: I'm not interested in --

6 MR. McDONNELL: Yeah.

7 THE COURT: -- inspecting them.

8 MR. McDONNELL: I'm very -- I have problems with  
9 handing information over to plaintiffs that told me I could  
10 pay \$170,000 per victim when they're satisfied customers.  
11 That's the objection that I have.

12 I have no problem handing them over the information  
13 to the three witnesses on the case that proclaim that I  
14 created a fraud. But I do not think that I -- there's also  
15 privacy things that in my disclaimer on my website where I'm  
16 not allowed to issue this information unless, you know, I have  
17 a subpoena or something of that nature from a court. And the  
18 thing I'm saying is there's privacy factors for the customers  
19 that are satisfied. This will probably turn them into  
20 unsatisfied customers if the CFTC calls when they are still  
21 satisfied. I'm still in contact with these people. We're  
22 friends outside of business and they only have three  
23 witnesses.

24 THE COURT: All right. You've articulated a concern  
25 about the privacy interests of your customers. I assume the

1 CFTC would be prepared to enter into a confidentiality  
2 stipulation to be so ordered by the court.

3 UNIDENTIFIED SPEAKER: Absolutely, Your Honor. And  
4 we indicated as such upstairs as well.

5 MR. McDONNELL: May I -- may I put a request in that  
6 if they have any request for customers or any type of  
7 information that I think that they should come bearing a name  
8 for this particular customer. Because there's no accusations  
9 from these customers because they're satisfied.

10 I think therefore, in terms of the information that  
11 they're requesting should be based on people they have  
12 complaining. Not customers that aren't. I mean, if I went to  
13 Macy's and if 3 people returned stuff and 100 people didn't,  
14 and they were satisfied, we wouldn't go talk to the people  
15 that were satisfied. So I think that this should be cut down  
16 to the three witness' information on this case. Not all the  
17 customers. Because they're all satisfied.

18 What I will do is bring in over 100 and something  
19 satisfied testimonials from my customers to prove that they're  
20 satisfied. But I have a problem handing it to these people  
21 with the wording that they had said to me through the  
22 exploratory hearings. And I ask of the Court to allow them to  
23 have the information request on the three witnesses in the  
24 case. Not the majority of the satisfied customers. The  
25 numbers don't work out, a couple hundred versus three.

1 I had a 99 percent customer service satisfaction  
2 ratio. And they want to contaminate my customers and turn  
3 them from satisfied customers to victims. Because this is  
4 more than just -- this has nothing to do with the three  
5 witnesses. This has to do with the CFTC making 170,000 per  
6 customer. If you look at the news, their fiscal year was down  
7 last year.

8 THE COURT: I think we're -- I think we're going far  
9 afield from --

10 MR. McDONNELL: Yeah, but --

11 THE COURT: -- the issue now. We're not -- we're  
12 not getting into the merits. We're getting into discovery.

13 MR. McDONNELL: Okay. In short I'll say this and  
14 I'll stop. In short I think that they should only have access  
15 to the three witnesses, not the satisfied customers.

16 THE COURT: All right. Would -- would either Mr.  
17 Tomer or Mr. Hurand like to respond?

18 UNIDENTIFIED SPEAKER: Your Honor, respectfully the  
19 customers for which he used go to the heart of this matter  
20 which is based in fraud on customers of his business Coin Drop  
21 Markets. For him to withhold information of, you know, his  
22 customer list would clearly be outside the realm of relevance.  
23 And additionally --

24 MR. McDONNELL: I objection.

25 UNIDENTIFIED SPEAKER: -- additionally the nature of

1 the [inaudible] chain itself makes it very difficult to  
2 identify a customer based on financial records alone.  
3 Therefore this is the entire reason we brought the injunction  
4 and was granted preliminary injunction upstairs.

5 MR. McDONNELL: Your Honor, may I address the Court?  
6 99 percent of the payments that came in through my company  
7 were through PayPal. Not Bitcoin, Litecoin, or crypto  
8 currency. This case has gone from a membership based business  
9 that provided services on an array of investments outside of  
10 crypto currency. They're spotlighting one thing and without  
11 getting into everything, again, I ask that the Court just  
12 grants them authority for the three witnesses not the  
13 additional satisfied customers. It's unfair to the defendant  
14 and it's unfair to the customers themselves.

15 THE COURT: All right. Anything else?

16 MR. McDONNELL: No, ma'am.

17 THE COURT: All right. The objections are overruled  
18 but the production will be pursuant to a confidentiality  
19 stipulation that should be signed by both sides and then will  
20 be submitted to the Court to be so ordered.

21 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

22 The next order of business then would be the  
23 schedule. Judge Weinstein already ordered the initial  
24 discovery with respect to the preliminary injunction for ten  
25 days from now. We have set forth a schedule here that I'm

1 happy to describe to the Court of how we would proceed leading  
2 up to the June 5th hearing. Simultaneously the order of  
3 mediation should proceed somewhere along those lines as well.  
4 We would propose, if you'd like to hear it now, I can go  
5 through that list.

6 THE COURT: Or you have not discussed this with Mr.  
7 McDonnell?

8 UNIDENTIFIED SPEAKER: Have not.

9 THE COURT: Why don't you very quickly since there's  
10 less -- there's less urgency with this than with the  
11 production. But what are you proposing --

12 UNIDENTIFIED SPEAKER: Sure.

13 THE COURT: -- for the schedule?

14 UNIDENTIFIED SPEAKER: So we would propose ten days  
15 from today would be the 16th of March. That would be the date  
16 upon which Mr. McDonnell would produce the expedited business  
17 records. On the 23rd, which is the Friday following, we would  
18 do initial disclosures. We'd have a May 18th cutoff for  
19 discovery. And a May 22nd identification of witnesses and  
20 evidence list.

21 THE COURT: I'm sorry. What date?

22 UNIDENTIFIED SPEAKER: May 22nd. And then the  
23 hearing on the 5th.

24 THE COURT: And why are the initial disclosures --  
25 why is the deadline for that on March 23rd as opposed to

1 earlier? While I recognize that Mr. McDonnell, if he's  
2 focusing on -- he may need until that time if he's producing  
3 expedited business records by the 16th, why can't the CFTC  
4 provide its initial disclosures by the 16th?

5 UNIDENTIFIED SPEAKER: We could provide initial  
6 disclosures on the 16th. We would obviously amend those  
7 following the -- following the production from Mr. McDonnell  
8 based on additional customers and information that's out  
9 there.

10 THE COURT: All right. Mr. McDonnell, do you want  
11 to respond?

12 MR. McDONNELL: I'd like the same time that they  
13 have.

14 THE COURT: You want -- their -- I'm ordering them  
15 to produce their initial disclosures before yours. You want  
16 me to shorten your time?

17 MR. McDONNELL: I don't understand. I'm sorry.

18 THE COURT: Initial disclosures are disclosures that  
19 the parties have to produce to one another without a specific  
20 request. And these are set forth in Rule 26 of the Federal  
21 Rules of Civil Procedure. The CFTC has proposed a  
22 simultaneous deadline for both sides of March 23rd. I said  
23 that while I'm prepared to give you an additional week beyond  
24 the March 16th deadline for producing the expedited business  
25 records --

1 MR. McDONNELL: Okay.

2 THE COURT: -- that I -- I was going to direct the  
3 CFTC --

4 MR. McDONNELL: Okay.

5 THE COURT: -- to produce their initial disclosures  
6 to you by the 16th. You want me to move up that deadline for  
7 you as well?

8 MR. McDONNELL: No. I agree with everything you  
9 said.

10 THE COURT: All right. So I'm prepared to adopt the  
11 schedule proposed by the CFTC with the one adjustment that  
12 I've just identified.

13 UNIDENTIFIED SPEAKER: And just for the -- to  
14 clarify, we would have the 16th initial disclosures from the  
15 CFTC as well as Mr. McDonnell's expedited business records?

16 THE COURT: Right. And by the 23rd, if you're going  
17 to supplement or amend them based on the production of  
18 business records on the 16th, you should do that by the 23rd.

19 UNIDENTIFIED SPEAKER: Your Honor, we'd reserve the  
20 right to move for additional time on that to the extent that  
21 the production from the defendant is not fulsome.

22 THE COURT: Well then you reserve the right to  
23 further supplement or amend but by the 23rd you should  
24 supplement and amend based on the March 16th production.

25 UNIDENTIFIED SPEAKER: Understood, Your Honor.

1 THE COURT: All right. Anything else?

2 UNIDENTIFIED SPEAKER: Judge Weinstein, Your Honor,  
3 directed us to have mediation with the defendant. To be  
4 clear, we filed this case against both the defendant as well  
5 as the entity that he controlled. The entity has defaulted in  
6 this matter. So the mediation would proceed against the  
7 individual defendant, Patrick McDonnell.

8 THE COURT: And I assume that we're talking about  
9 Court-annexed mediation?

10 UNIDENTIFIED SPEAKER: I'm sorry?

11 THE COURT: Court-annexed mediation or private  
12 mediation?

13 UNIDENTIFIED SPEAKER: Court. Yes, Your Honor.  
14 With you, Your Honor.

15 THE COURT: No, I'm talking about Court-annexed  
16 mediation. We have -- there's an ADR department within the  
17 Court.

18 UNIDENTIFIED SPEAKER: Understood, Your Honor. I  
19 wasn't clear by Judge Weinstein's order whether he meant to  
20 ask us to do that or to proceed with mediation with you. It  
21 was unclear. We're happy to do either.

22 THE COURT: Well what was the time -- what time  
23 frame were you considering?

24 UNIDENTIFIED SPEAKER: Merely earlier than later,  
25 essentially, so that discovery wouldn't proceed too far to the



1 extent there is a chance of a successful resolution here.

2 THE COURT: Earlier is all relative. Are you  
3 talking about April or are you talking about May?

4 UNIDENTIFIED SPEAKER: April, Your Honor.

5 THE COURT: All right. If it's going to be before  
6 May, we'll do it April 17th at 10:00. Is there anything else?

7 UNIDENTIFIED SPEAKER: Your Honor, the defendant  
8 invoked his Fifth Amendment privilege during the hearing and  
9 that was something Judge Weinstein wanted to make sure Your  
10 Honor was aware of going forward with this. And to the extent  
11 that we would seek the deposition of the defendant, that's  
12 something that may come up down the line.

13 THE COURT: Well, Mr. McDonnell, you have the right  
14 to invoke your Fifth Amendment privilege but you should  
15 understand that in connection with a civil case in contrast to  
16 a criminal case, the invocation of the privilege does give  
17 rise to an adverse inference. Or can -- I should say can --  
18 may give rise to an adverse inference. The finder of fact is  
19 entitled to infer from the invocation of the privilege that  
20 the -- that had the witness responded to the question that the  
21 testimony would have been adverse to the invoking party. So  
22 you should be aware of that. Can you -- let me ask you this.  
23 Can you afford to retain counsel?

24 MR. McDONNELL: No, or I would. I'm honestly  
25 sitting here struggling today and Judge Weinstein helped me

1 with that issue.

2 THE COURT: He helped you with the issue of what?

3 MR. McDONNELL: Well he just -- he explained it to  
4 me in terms of, you know, do you wish, or wish not to invoke  
5 your right and gave me a brush over of, you know, and I  
6 invoked it.

7 THE COURT: Well if in fact you truly cannot afford  
8 to retain counsel, you know, I would -- I understand that he  
9 urged you to visit the Federal Pro Se --

10 MR. McDONNELL: Yes.

11 THE COURT: -- Litigation Clinic which is on the  
12 first floor of this courthouse. They may not be able to see  
13 you today, but you should go in and make an appointment. And  
14 if you -- but they only provide limited representation. They  
15 don't provide full representation. You would be able to --  
16 assuming that they didn't have a conflict and they felt you  
17 qualified financially for their assistance, they could help  
18 you if you wanted for example in responding to discovery  
19 demands and making discovery demands. But they wouldn't  
20 appear on your behalf in Court or at a deposition.

21 And given the nature of the allegations in this case  
22 and the potential criminal exposure you would be well-advised  
23 to try to find counsel either to try and retain counsel or  
24 perhaps the Federal Pro Se Litigation Clinic can help you  
25 secure Pro Bono counsel if you truly cannot afford to retain

1 counsel.

2 MR. McDONNELL: Thank you. He gave me a brochure  
3 that gives me the information.

4 THE COURT: All right. I would ask the CFTC to  
5 submit a proposed order consistent with what the Court has  
6 ruled today. How much time do you need to submit that?

7 UNIDENTIFIED SPEAKER: We should be able to do that  
8 today, Your Honor.

9 THE COURT: All right. And in terms of the -- in  
10 terms of the confidentiality stipulation -- and you should  
11 share these things with Mr. McDonnell. Do you have an email  
12 address for him?

13 UNIDENTIFIED SPEAKER: We do. Mr. McDonnell  
14 requested that we do everything through snail mail. We're  
15 happy to provide it by email as well so that he has the  
16 stipulation and the full list and we can do this in a more  
17 expedited manner.

18 THE COURT: Mr. McDonnell, I would encourage you to  
19 register for ECF, electronic court filing. Although a Pro Se  
20 is not permitted to file over the ECF system --

21 MR. McDONNELL: That's why I didn't.

22 THE COURT: -- to file electronically, you can  
23 nevertheless register and receive electronic notices. So if  
24 there's a Court order you will then receive it over your email  
25 address. In addition, I would ask counsel for the CFTC if --

1           You're not going to communicate with them by email,  
2           you haven't agreed to do that?

3           MR. McDONNELL: Well from this point on they can  
4           send the necessary documentation. That was -- I --

5           THE COURT: By email or by --

6           MR. McDONNELL: By email. They have my email,  
7           [cdm@gmx.us](mailto:cdm@gmx.us).

8           THE COURT: And I would ask the CFTC since Mr.  
9           McDonnell apparently is agreeing to electronic service, to --  
10          if he wants to file something, if you would agree to enter it  
11          into ECF on his behalf, if he emails it to you in order to  
12          expedite the Courts getting any papers from him.

13          UNIDENTIFIED SPEAKER: We'd be happy to do so, Your  
14          Honor.

15          THE COURT: All right. Is there anything else?

16          UNIDENTIFIED SPEAKER: I would just note that given  
17          that Judge Weinstein did deny the motion to dismiss today,  
18          that we'd request that the defense time to answer would be the  
19          same under the federal rules giving him till the same date as  
20          the expedited discovery is due to answer.

21          THE COURT: Mr. McDonnell, is there any reason why  
22          you couldn't do that?

23          MR. McDONNELL: No, I will.

24          THE COURT: All right. And again, I encourage you  
25          to try and secure counsel in this case.

1 MR. McDONNELL: I will.

2 THE COURT: Anything else?

3 UNIDENTIFIED SPEAKER: No, Your Honor, from the  
4 CFTC.

5 THE COURT: All right. Thank you all very much.

6 (Proceedings concluded at 1:05 p.m.)

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: March 14, 2018  
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